

AMENDED IN ASSEMBLY JUNE 8, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

Assembly Joint Resolution

No. 16

**Introduced by Assembly Members Eduardo Garcia, Bloom, and
Low
(Coauthors: Assembly Members Atkins, Chiu, Eggman, and
Cristina Garcia)**

May 13, 2015

Assembly Joint Resolution No. 16—Relative to blood donations.

LEGISLATIVE COUNSEL’S DIGEST

AJR 16, as amended, Eduardo Garcia. Blood donations.

This measure would call upon the President of the United States to encourage the Secretary of the United States Department of Health and Human Services to adopt policies to repeal the current and upcoming discriminatory donor suitability policies of the United States Food and Drug Administration (FDA) regarding blood donations by men who have had sex with another man and, instead, direct the FDA to develop science-based policies such as criteria based on risky ~~sexual~~ behavior in lieu of sexual orientation.

Fiscal committee: no.

- 1 WHEREAS, Since 1983, the United States Food and Drug
2 Administration (FDA), an agency under the United States
3 Department of Health and Human Services (HHS), has prohibited
4 the donation of blood by any man who has had sex with another
5 man (MSM) at any time since 1977; and
6 WHEREAS, In December 2014, based on recommendations
7 from the HHS Advisory Committee on Blood and Tissue Safety

1 and Availability, the FDA announced its intent to promulgate
2 regulations to allow an MSM to donate blood only if he has not
3 been sexually active for the past 12 months. ~~The HHS should be~~
4 ~~commended for this initial step towards equality, but a double~~
5 ~~standard still exists by treating gay and bisexual men differently~~
6 ~~from heterosexual men; Despite these recent steps toward a policy~~
7 ~~change, a double standard would still exist under the policy as it~~
8 ~~is proposed to be revised because it would still treat gay and~~
9 ~~bisexual men differently from heterosexual men; and~~

10 WHEREAS, California law prohibits discrimination against
11 individuals on the basis of actual or perceived sex, sexual
12 orientation, gender identity, and gender-related appearance and
13 behavior; and

14 WHEREAS, France, Spain, Italy, Russia, Mexico, and Portugal
15 have adopted blood donor policies that measure risk against a set
16 of behaviors, sexual and otherwise, rather than the sex of a person's
17 sexual partner or partners; and

18 WHEREAS, The FDA does not allow gay and bisexual men in
19 committed relationships to donate blood because, while one partner
20 may be monogamous, that individual cannot guarantee that the
21 other partner is monogamous. The FDA does not apply this same
22 logic to heterosexual relationships, which in effect discriminates
23 against gay and bisexual men; and

24 WHEREAS, A 12-month deferral policy for gay and bisexual
25 men to donate blood is overly stringent given the scientific
26 evidence, advanced testing methods, and the safety and quality
27 control measures in place within the different FDA-qualified blood
28 donating centers. The technology can identify within 7 to 10 days
29 with 99.9 percent accuracy whether or not a blood sample is
30 HIV-positive, and the chance of the blood test being inaccurate
31 within the 10-day window is about 1 in 2,000,000; and

32 WHEREAS, The General Social Survey conducted by NORC
33 at the University of Chicago estimates that 8.5 percent of men in
34 the United States have had at least one male sexual partner since
35 18 years of age, 4.1 percent of men report at least one male sex
36 partner in the last 5 years, and 3.8 percent report a male sex partner
37 in the last 12 months; and

38 WHEREAS, An estimated 45.4 percent of men (54 million) in
39 the United States are eligible to donate blood, but only 8.7 percent
40 of eligible men actually do. There are 15.7 million donations of

1 blood per year made by 9.2 million donors, yielding approximately
2 1.7 donations per donor; and

3 WHEREAS, The Williams Institute of the University of
4 California at Los Angeles School of Law estimates that, based on
5 the population of eligible and likely donors among the MSM
6 community, lifting the federal lifetime deferral policy on blood
7 donation by an MSM would result in 4.2 million newly eligible
8 male donors, of which 360,600 would likely donate, generating
9 615,300 additional pints of blood. Applying national estimates to
10 the California population, the Institute further estimates that lifting
11 the ban on MSM blood donations would add an additional 510,000
12 eligible men to the current blood donor pool, of which 43,917
13 would likely donate, resulting in an additional 74,945 donated
14 pints in California; now, therefore, be it

15 *Resolved by the Assembly and the Senate of the State of*
16 *California, jointly*, That the California State Legislature calls upon
17 the President of the United States to encourage the Secretary of
18 the United States Department of Health and Human Services to
19 adopt policies to repeal the current and upcoming discriminatory
20 donor suitability policies of the United States Food and Drug
21 Administration (FDA) regarding blood donations by men who
22 have had sex with another man and, instead, direct the FDA to
23 develop science-based policies such as criteria based on risky
24 ~~sexual~~ behavior in lieu of sexual orientation; and be it further

25 *Resolved*, That the Chief Clerk of the Assembly transmit copies
26 of this resolution to the President and Vice President of the United
27 States, to the Secretary of the United States Department of Health
28 and Human Services, to the Speaker of the House of
29 Representatives, to the Majority Leader of the Senate, and to each
30 Senator and Representative from California in the Congress of the
31 United States.

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